

MEMORANDUM

DATE: July 30, 2009

TO: Environmental Health Managers
District Health Directors
Authorized Onsite Soil Evaluators
VPI Contract Soil Scientists

FROM: Karen Remley, M.D., M.B.A., F.A.A.P.
State Health Commissioner

SUBJECT: Standards for Applications with Supporting Documentation from the Private Sector

GMP #126.B

Part I Background, Scope, General Requirements

A. Authority and Purpose. This interim policy is authorized by Title 32.1-164 of the *Code of Virginia (Code)*, which provides the Board of Health (Board) with the powers and duties to establish:

1. Criteria for granting, denying and revoking permits for onsite sewage disposal systems,
2. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system construction permits, and
3. Processes for filing an application for an onsite sewage disposal system permit with the Virginia Department of Health (VDH).

This policy is further authorized by applicable sections of the *Private Well Regulations* (12 VAC 5-630, et seq. *Well Regulations*) and the *Sewage Handling and Disposal Regulations* (12 VAC 5-610 et seq. *Sewage Regulations*). The purposes of this document are to:

1. Inform licensed onsite soil evaluators of the expectations of the agency for work submitted in support of applications for certification letters, subdivision approvals and construction permits in the onsite sewage and private well programs,
2. Provide guidance to agency staff for processing work submitted by licensed onsite soil evaluators, and
3. Establish expectations and deadlines for processing applications.

B. Background. The 1994 General Assembly passed legislation requiring the Board to create a program for Authorized Onsite Soil Evaluators (SB 415, Virginia Acts of Assembly, 1994, Chapter 747). That legislation required the Board to implement a program for training, testing, approving, and disapproving Authorized Onsite Soil Evaluators (AOSEs). Initially the law provided that any person who was a certified professional soil scientist (CPSS) and demonstrated knowledge, skills, and abilities in the field of evaluating soils for onsite sewage treatment and disposal systems would be deemed to be an AOSE. Furthermore, the legislation required VDH to contract with an AOSE for soil evaluations if the processing time (backlog) for applications for construction permits exceeds 15 working days.

The 1999 General Assembly passed legislation that introduced major changes to the AOSE program (HB 2337, SB 963, 1999 Acts of Assembly, Chapters 0871, 1038). Of particular importance was the new mandate that VDH accept private evaluations and designs for residential development from AOSEs and from professional engineers (PE) in consultation with an AOSE. The new legislation placed strict time limits on VDH for processing applications for certification letters and construction permits as well as time limits for reviewing proposed subdivisions for local governments. The 1999 legislation also included a provision (deemed approval) for automatically approving AOSE/PE evaluations and designs if VDH fails to act on a request within the time limits.

VDH implemented the 1999 legislation via interim policies (GMPs #99, #100, and #103) beginning July 1, 1999, and the Board promulgated the *Emergency AOSE Regulations* (12 VAC 5-615-10 et seq.) which were effective for one year beginning January 3, 2000. When the *Emergency AOSE Regulations* expired, VDH offered to continue to accept certified evaluations and designs from those AOSEs holding current certifications if they agreed to be bound by the requirements of the *Emergency AOSE Regulations* and VDH's policies. Those AOSEs desiring to do so executed written agreements with VDH.

The Board promulgated permanent *Authorized Onsite Soil Evaluator Regulations* (12 VAC 5-615-10 et seq., the *AOSE Regulations*) with an effective date of July 1, 2002. This policy provides guidance to VDH staff, AOSE/PEs, and others for administering, interpreting, and enforcing the *AOSE Regulations*.

Section 54.1 -2301.B of the *Code* requires the Department of Professional and Occupational Regulation (DPOR), through the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP) to establish a program for licensing onsite soil

evaluator professionals, among other onsite sewage professionals. When DPOR's regulations for Onsite Soil Evaluators became effective on July 1, 2009, regulation of soil evaluators transferred from VDH to WWWWOOSP.

VDH's authority to administer the *AOSE Regulations* expired on July 1, 2009; therefore, VDH can no longer regulate the practice of onsite soil evaluators. However, VDH does specify the requirements for describing complete applications and can adopt procedures to assure that properly licensed regulants of DPOR perform the work.

C. Scope and Applicability. This policy applies to all site and soil evaluation reports and/or designs submitted to VDH by private sector onsite soil evaluators (OSEs) and OSEs working in conjunction with licensed professional engineers (PEs). This policy does not apply to work submitted in accordance with Title 32.1-163.6 of the *Code*. Follow GMP #146 or its successor policy for processing those applications.

Only applications (includes requests for subdivision review) for *residential development* submitted in proper form with evaluations and designs certified by an OSE/PE shall be subject to processing time limits and deemed approval. VDH shall accept and approve such applications in accordance with the *Code* and VDH policies and may do so without the requirement for either Level 1 or Level 2 Reviews. Section 163.5.D of the *Code* provides that "proprietary pre-engineered systems" deemed by VDH to comply with the Board's regulations shall not be subject to deemed approval. VDH may, at its sole discretion, accept and approve applications for *non-residential development* and applications for proprietary pre-engineered systems submitted in proper form with evaluations and designs certified by a licensed OSE/PE without the requirement for either Level 1 or Level 2 Reviews.¹

Local ordinances (including Chesapeake Bay Act requirements) establishing requirements for onsite wastewater systems that are more stringent than the Board's regulations are not affected by this policy unless a locality indicates in writing that it desires the local or district health department to apply the provisions of this policy to those local ordinances. Where the locality has previously requested that the local or district health department apply the provisions of the *AOSE Regulations* to local ordinances, no additional request is necessary as a result of this policy. When such a request is made, the appropriate local or district health department will be responsible for requiring compliance with both the Board's regulations and the appropriate local requirements. Local and district health departments are responsible for ensuring that local government officials are adequately informed regarding this policy and for determining that a person requesting implementation of more stringent local ordinances has authority to act for the local government.

D. License Required. It is the policy of VDH to accept work submitted under this policy only from properly licensed OSE/PEs working within the scope of their profession as determined by the appropriate regulatory board.

The *Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations* (Statutes Title 54.1, Chapter 23) are effective July 1, 2009.

¹ See Part III, Subsections C and D of this policy for explanations of Level 1 and Level 2 Reviews.

E. Definitions. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Alternative Onsite Sewage System” or “alternative onsite system” means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

“Backlog” is deemed to exist when the processing time for more than 10% of a local or district health department’s complete bare applications for construction permits exceeds a predetermined number of working days (i.e., a 15-day backlog exists when the processing time for more than 10% of permit applications exceeds 15 working days). When calculating backlogs, only applications for construction permits shall be counted.

“Bare Application” means an application for a construction permit or a certification letter submitted without supporting documentation from an OSE/PE.

“Board” means the State Board of Health.

“Certification Letter” means a letter issued by the department, in lieu of a construction permit, that identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system.

“Complete Application” means an application for a construction permit or certification letter that includes all necessary information needed to process the application as specified in 12 VAC 5-610-250 including a site plan as specified in 12 VAC 5-610-460.

“Conventional Onsite Sewage System” means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

“Deemed Approved” or “Deemed Approval” means that VDH has not taken action to approve or disapprove an application for a permit, an individual lot certification letter, multiple lot certification letters, or subdivision approval for residential development within the time limits prescribed in §§ 32.1-163.5 and 32.1-164 H of the *Code of Virginia*. In such cases, an application submitted in proper form pursuant to this chapter is deemed approved and the appropriate letter or letters, permit, or approval shall be immediately issued by VDH. Deemed approval applies only to applications for single-lot construction permits, subdivision review, and single or multiple-lot certification letters submitted with evaluations and designs certified by an OSE/PE in accordance with the provisions of the *Code of Virginia*, the *Sewage Handling and Disposal Regulations*, and this chapter. Sites that have been previously denied by VDH and proprietary, pre-engineered systems deemed by VDH to comply with the board’s regulations are not subject to the provisions of deemed approval. An application “deemed approved” means that it is approved only with respect to the Board of Health’s regulations. In accordance with 12 VAC 5-615-60.B, a local government may authorize VDH in writing to implement the provisions of any local ordinance that are more restrictive than the *Sewage Handling and Disposal Regulations* through the provisions of this chapter.

“Multiple Lot Certification Letters” means two or more applications for certification letters filed by the same owner for existing or proposed lots to serve detached, individual dwellings.

“Onsite Soil Evaluator” (OSE) means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

“OSE/PE” means a licensed onsite soil evaluator or a professional engineer working in consultation with a licensed onsite soil evaluator.

“Professional Courtesy Review” means a site-specific field review requested by an OSE/PE prior to the submission of an application for a construction permit or certification letter or a general field consultation (not site-specific) regarding a proposed subdivision.

“Professional Engineer in Consultation with an OSE” means that a professional engineer has communicated with an OSE regarding the site and soil conditions present where the system is proposed, in a manner sufficient to assure compliance with the *Sewage Handling and Disposal Regulations* and this chapter.

“Processing Time” means the number of working days from the date a complete, bare application is received by a local or district health department to the date a permit or certification letter is issued. Working days characterized by severe weather conditions shall not be included in any calculation of processing time.

“Residential Development” means development, including repair or replacement systems in accordance with 12 VAC 5-610-280 C 2, using single family homes, which utilize individual onsite sewage systems for each structure. Mass drainfields and other cluster systems that serve more than one dwelling are not considered residential development for the purposes of this chapter.

“Single Lot Construction Permit/Certification Letter” means one application filed by an owner for a sewage disposal system construction permit or certification letter to serve an individual dwelling on one lot or parcel of land.

“Subdivision Review” means the review of a proposed subdivision plat by a local health department for a local government pursuant to a local ordinance or ordinances and pursuant to §§ 15.2-2242 and 15.2-2260 of the *Code of Virginia* and 12 VAC 5-610-360 of the *Sewage Handling and Disposal Regulations* for the purposes of determining and documenting whether an approved sewage disposal site is present on each proposed lot.

F. Roles and Responsibilities.

1. The Virginia Department of Health (VDH) shall:

- a. Assure compliance with the applicable policies and regulations of the Board. VDH shall review the materials submitted with an application as it deems necessary to assure compliance with this chapter, the *Sewage Regulations*, the *Well Regulations* and the department’s policies prior to approval or disapproval of an application.
- b. Conduct field reviews as necessary to protect public health and the environment.

- c. Provide a site-specific field courtesy review when requested by an OSE/PE as time and resources may allow. Such requests shall not be included in any calculation of backlogs nor shall they be subject to the time limits contained in this policy or to deemed approval. The professional courtesy review shall not be considered to be a case decision, is voluntary, and will be provided at the sole discretion of the local health department.
- d. Initiate procedures to revoke or modify its approval of a permit, certification letter or subdivision approval issued in reliance upon an OSE certification and later has reason to believe that the site or sites or system design submitted by the OSE do not substantially comply with the minimum requirements of the *Sewage Regulations*. Such revocations shall be deemed to be permit denials and may be appealed by the aggrieved named party to the Sewage Handling and Disposal Appeals Review Board (Appeals Board) in accordance with Section 32.1-166.6 of the *Code*. With the written consent of the owner, VDH may revise a permit, certification letter, or subdivision approval to substantially comply with the *Sewage Regulations*. The owner may be required to file a new application and to provide formal or informal plans if such plans are required under the *Sewage Regulations*.

2. The OSE shall:

- a. Certify that a site submitted to the health department for a construction permit, a certification letter or a subdivision approval meets or does not meet the requirements of the *Sewage Regulations*, the *Well Regulations*, or both. Responsibility for assuring that site evaluations and designs comply with the *Sewage Regulations* or the *Well Regulations* rests with the OSE submitting the work.
- b. Make *minor* revisions, at his or her discretion, to a permit, certification letter or subdivision approval issued in reliance on the evaluations and/or designs of an OSE. An OSE is not required to make revisions, minor or major, that result from actions taken by the owner including, but not limited to, improper site grading, improper location of structures, removal, compaction or other damages to soils.

Minor revisions do not include changes in design flow or substantive changes in square footage of absorption area. All revisions must fully comply with the *Sewage Regulations* and must be approved by VDH before the issuance of the operation permit. Whenever major revisions, such as changes in system design or location, are required, a new application for a construction permit is required.

- c. Inspect, at the time of installation, any system for which a construction permit was issued in reliance upon a design submitted by the OSE and provide an inspection report, including an “as built” drawing, and completion statement to the owner and the local or district health department. The inspection report and completion statement shall be in a form approved by VDH’s Division of Onsite Sewage and Water Services (Division) and shall state that the OSE has inspected the installation. An Operation Permit (Section 340 of the *Sewage Regulations*) will not be issued for any system until the appropriate report and completion statement have been received by the local or district health department.

G. General Requirements.

1. All requests for VDH approvals or reviews (construction permits, letters, subdivision approvals, courtesy reviews) must be made in writing and must contain a statement signed by the owner of record giving VDH permission to enter the property during the processing of the request and until such time that an operation permit has been issued for a sewage system. Generally, requests for construction permits and letters begin with filing an application; requests for review of proposed subdivisions are initiated by a local government, and requests for courtesy reviews are initiated by an OSE/PE.
2. All evaluation reports and designs submitted to VDH by an OSE/PE must be in the form specified in this policy and contain the minimum information required, and shall be certified as substantially complying with the minimum requirements of the *Sewage Regulations*.
3. The cover page shall be identified as “Page 1 of X”, and shall, at a minimum, contain a list of the documents contained in the design package, and identify the property and property owner, OSE/PE contact information, date, and revision dates. To assure that contractors have the correct set of plans, the health department’s approval letter must correspond to the date on the cover page or the date of last revision on the cover page, if revisions are made (see Form II).
4. The owner of the property is responsible for filing an application with the local health department. An application is still required to receive a construction permit or certification letter regardless of whether the application is part of the OSE/PE package or filed separately (and the supporting OSE/PE work is attached to the application). The local health department must receive one original report of any evaluation or design when the application is supported by OSE/PE work.

Whenever VDH denies a request for site approval (construction permit, letter, subdivision approval) for a reason that is correctable by the applicant, the owner may submit additional information as necessary within 90 days from the date the request was rejected. Examples of such administrative denials include cases where applications are incomplete, inaccurate information is provided, applications are not in proper form, engineering plans are needed, or a lot needs to be cleared. The time limits for processing the application, when applicable, will begin anew on the day the additional information is received.

H. Processing Time Limits and Deemed Approval.

1. The provisions of this section apply only to applications for residential development and do not apply to any application for a proprietary, pre-engineered system that has been deemed by VDH to comply with the Board’s regulations. VDH may accept evaluations and designs for such proprietary, pre-engineered systems in accordance with this policy; however, the processing time limits and deemed approval shall not apply to any such application.
2. VDH shall review applications submitted with OSE documentation in the form specified in this policy and shall issue a written approval or denial within the time frames specified in Table 1 of this subsection. In the event the application is denied, VDH shall set forth in writing the reasons for denial.

Table 1

Type of Application	Time Limit
Individual Permit Application	15 working days
Individual Certification Letter	20 working days
Multiple Lot Certification Letter	60 days
Subdivision Review	60 days

3. If VDH does not approve or disapprove an OSE/PE application or a request for a subdivision review properly submitted in accordance with this chapter within the time limits specified in Table 1, the application or request for subdivision review shall be deemed approved and the appropriate letter, permit, or approval shall be issued.

Part II Applications

A. Applications for Permits and Letters; Request for Subdivision Review.

1. Incomplete submittals delay the timely and accurate decision making process. Therefore, all applicants are vigorously encouraged to assure that all submittals are complete at the time of submission. Part II.A, Section 4 of this policy contains the requirements for applications filed with OSE/PE evaluations and/or designs. An OSE/PE may submit additional information beyond the minimum requirements when he believes it may be in the interest of public health, the environment, or the client to do so. Applications submitted to VDH are either bare applications (without evaluation or designs from an OSE/PE) or applications with complete supporting documentation from an OSE/PE.
2. Each page of a submittal package must be numbered using the format “Page ____ of ____” in the top right hand corner of each page. The first page shall be the cover page (see Form II). This will assure the health department has in its possession, at the time of the review, a complete package of the information submitted.
3. Sites certified by an OSE/PE must be defined in a manner that allows them to be identified with accuracy and precision of three feet or less. This refers to both the documentation submitted to VDH and the ability to locate the site in the field at a later date. The OSE/PE or surveyor must provide sufficient information to allow a person with the knowledge, skills, and abilities of an Environmental Health Specialist (EHS), an OSE, or an onsite wastewater system installer to locate a site in the field. Such information may include, but is not limited to, permanent field markers or distances and bearings to identifiable landmarks. Current VDH policy (GMP #52.A) applies to bare applications and requires an applicant for a certification letter to “provide a survey plat that identifies the approved onsite sewage disposal system area.” The policy provides that the district or local health department may waive the survey requirement on a case by case basis; however, in those cases the district or local health department assumes responsibility for ensuring that the absorption area is accurately located. Except as noted below, each site certified by an OSE/PE must be located by surveying the perimeter of the soil absorption area and showing that area on a survey plat. This plat is to be incorporated as part of the site and soil evaluation report. An OSE/PE may opt to show the location of a site for a construction permit (not a certification letter or proposed subdivision) by drawing the perimeter of the absorption area to scale on a survey plat or a copy of a

survey plat. VDH does not prescribe for the professional the methods or equipment that he must use to accomplish these requirements; however, it strongly recommends that all sites, including those for construction permits, be surveyed by a licensed surveyor and platted accordingly.

4. The minimum requirements for all applications filed with OSE/PE evaluations and/or designs are as follows:
 - a. All applications (residential and non-residential) for single-lot construction permits shall contain the following:
 - i. The completed application form (OSE Form D);
 - ii. The appropriate fees;
 - iii. A site and soil evaluation report in accordance with Part II, Section B of this policy;
 - iv. A proposed well site location and well construction criteria (when a private well is proposed);
 - v. Construction drawings and specifications for the system proposed in accordance with Part II, Section C of this policy; and
 - vi. A statement *on the cover page* certifying that the site and soil conditions and design substantially comply with the *Sewage Regulations* (and the *Well Regulations* when a private well is proposed). OSE Form G contains the appropriate certification statements for use by an OSE/PE.
 - b. All applications (residential and non-residential) for single-lot certification letters must include the following:
 - i. The completed application form (OSE Form D);
 - ii. The appropriate fees;
 - iii. A site and soil evaluation report in accordance with Part II, Section B of this policy;
 - iv. A proposed well site location and well construction criteria (when a private well is proposed);
 - v. An abbreviated system design in the form as specified in OSE Form E, or as appropriate for the type of system proposed; and
 - vi. A statement on the cover page certifying that the site and soil conditions and design substantially comply with the *Sewage Regulations* (and the *Private Well Regulations* when a private well is proposed). OSE Form G contains the appropriate certification statements for use by OSE/PEs.

- c. *Multiple certification letters* (see Definitions) shall be the method for reviewing proposed subdivisions in localities without a subdivision ordinance. In addition to the information specified in paragraph b above (includes an application form and fees for each proposed lot), a preliminary subdivision plat that provides the information specified in paragraph d.iv. below is required.
- d. Local and district health departments shall review proposed subdivisions only upon request by an authorized agent of local government. An owner or applicant may not initiate a request for subdivision review independent of the local subdivision process. The subdivision process is a local function that is governed by local ordinances. Section 15.2-2242 of the *Code* provides that localities may adopt ordinances requiring the applicable health official to render a preliminary opinion regarding the suitability of the subdivision for the installation of subsurface sewage disposal systems. Section 15.2-2260 provides that a local subdivision agent must forward preliminary plats to appropriate state agencies if approval of a feature or features of the plat by a state agency is necessary. That section further provides that any state agency making a review of a plat forwarded to it must complete its review within 45 days and if the agency does not approve the plat it must state the specific reasons for disapproval in writing. Section 360 of the *Sewage Regulations* provides guidance when review of subdivision plats is required by local ordinances. All requests for subdivision review must include the following:
 - i. A letter from the authorized agent of the local government requesting review of the proposed subdivision and a statement certifying that the subdivision package has been determined to be complete (See OSE Form F);
 - ii. Site and soil evaluation reports for each proposed lot, identified as to the subdivision/section and proposed lot number, in accordance with Part II, Section C of this policy;
 - iii. Proposed well site locations and well construction criteria (when private wells are proposed);
 - iv. A preliminary subdivision plat that provides the information specified in Section 360 of the *Sewage Regulations*. This plat must include all the information required by local ordinances and the following if not required by local ordinance: locations of proposed onsite sewage systems and reserve areas (if applicable), all proposed and existing streets, utilities, storm drainage, water supplies, easements, and lot lines for each proposed lot, and original topographic contour lines by detail survey. The plat should be prepared according to suggested scales contained in Appendix L of the *Sewage Regulations*. The immediate area in and around each proposed system, including the soil absorption system, must be shown using a contour interval not greater than two feet; the contour area shown outside the soil absorption system should be sufficient to establish the relationship of the area to relevant topographic features such as, but not limited to, drainage ways, sink holes, road cuts, and steep slopes. A minimum distance of 20 feet is recommended;
 - v. Abbreviated system designs in the form specified in OSE Form E, or in a form appropriate for the type of system proposed;

- vi. A statement on the cover page certifying that the site and soil conditions and designs substantially comply with the *Sewage Regulations* (and the *Well Regulations* when private wells are proposed). OSE Form II contains the appropriate certification statement for use by OSE/PEs; and
- vii. A signed statement from the owner of record giving VDH permission to enter the property for the purposes of reviewing the site and soil conditions both prior to the review and approval and afterward (if necessary) for quality control purposes and to protect public health and the environment. The permission statement from the standard application form (OSE Form D) is sufficient.

B. Documentation Required for Site Evaluation Reports.

1. All site evaluation reports must be in a form approved by the Division and must contain the minimum information specified by the Division. OSE Form G contains the site evaluation report form for use by *all evaluators*. All site evaluation reports must be signed and dated. In addition, all reports must be properly marked as substantially complying (approved) or not complying (rejected) with the *Sewage Regulations*.
2. All site and soil evaluations must be conducted in accordance with Part III, Sections 450-500 of the *Sewage Regulations* and reports must contain the minimum information specified by the *Sewage Regulations*. Each soil profile hole augered or dug during a soil investigation must be described completely and accurately and located on a site sketch. All holes used to establish the suitability of a site must show that the site substantially complies with the requirements of the *Sewage Regulations*. The following shall apply to all soil descriptions:
 - a. The maximum acceptable separation distance between observation holes is 100 feet. The use of common holes between adjacent proposed sewage disposal system sites to describe both sites is not acceptable.
 - b. Number of profile holes. The *Sewage Regulations* (see Section 480.C.1.4) require a minimum of five soil profile descriptions for each separate area being established as suitable for a soil absorption system (i.e. primary and/or reserve area). If a site exhibits sufficient uniformity of topography and profile, the number may be reduced to three. Profile holes must be placed so as to be representative of the soil absorption area.
 - c. Depth. Profile holes must meet the requirements of the *Sewage Regulations* (see Section 480.C.1.3) and be at least 18 inches deeper than the proposed trench bottom depth.
 - d. The following soil characteristics must be documented (see Section 490 of the *Sewage Regulations*):
 - i. Soil horizons. The depth of each major horizon of all soil profiles must be documented using U. S. Department of Agriculture soil textural classes (including the percent and size of coarse fragments) and soil colors. Soil colors (matrix and mottle patterns) are to be determined and reported using the *Munsell Soil Color Charts* (Munsell Color, Macbeth Division of Kollmorgen Instruments Corp., 2441 North Clavert Street,

Baltimore, Md. 21219). All colors must be reported using the Munsell notations for hue, value and chroma (i.e. 5YR 5/6). Color names may be added. Abbreviations of terms (i.e. soil color, texture, etc.) are not acceptable.

- ii. All holes or pits in the area of the proposed soil absorption system must be described as to depth to redoxymorphic features (seasonal water table or seasonal saturation).
 - iii. Depth to rock or restrictive layers (when applicable).
 - iv. Soil permeability. The estimated percolation rate must be reported. When permeability tests are conducted (including percolation tests, hydraulic conductivity tests, and other measures of soil permeability), a copy of all test results must be included. Permeability tests conducted by a licensed OSE or a licensed PE do not require VDH supervision.
 - v. Shrink Swell potential (if moderate or greater).
 - vi. When backhoe pits or other excavations are used, the complete range of soil characteristics exposed is to be described (depth to mottles, rock percentage and depth to rock or other restrictive layers and variability in rock depth). OSHA Regulations apply when working in pits.
- e. Additional information. The following soil characteristics are to be documented as the evaluator determines necessary:
- i. Soil consistence;
 - ii. Soil structure (type, class and grade);
 - iii. Soil mottling patterns (abundance, contrast and size);
 - iv. Soil parent material and geologic province; and
 - v. Clay mineralogy and the existence of various soil minerals (feldspar, mica, quartz, etc.) Root penetration.
3. A site sketch shall be provided with each site and soil evaluation report that documents the location of all soil profiles and relevant site features. Sketches must represent the topography in the vicinity of the proposed onsite sewage system as well as the topography in the vicinity of any private water supply (existing or proposed) so as to establish the topographic relationship between such water supplies and sources of contamination including, but not limited to, the proposed soil absorption system. Sketches must be neat, legible, and drawn to scale when possible. The OSE/PE may use the survey plat required in Part II, Section B.3 of this policy as the site sketch when appropriate. When scale drawings are not practical, the sketch shall provide accurate documentation (distances) for profile holes and other features and suitable reference points. If not using the survey plat, sketches should be drawn on 8.5" x 11" paper. Sketches must show the minimum information specified in Section 460 of the *Sewage Regulations*, including, but not limited to, the following features as specified below:

- a. Existing and proposed property lines for the subject property and any other property lines within ten feet of the perimeter of the proposed soil absorption area and/or proposed structure;
 - b. Within 200 feet of the center of the proposed soil absorption area and structure:
 - i. Existing and proposed wells, springs, and cisterns. If a private water supply is proposed, the location and construction of the proposed water supply (or supplies) must comply with the *Well Regulations*;
 - ii. Existing and proposed onsite sewage systems;
 - iii. Shellfish waters, lakes, streams, other bodies of water, and surface impoundments used for drinking water; and
 - iv. Sinkholes, drainage ways, flood plains, drainage ditches, and tile drainage.
 - c. Percent slope and direction (an acceptable topographic map may be substituted);
 - d. Existing and proposed structures, buildings, etc. within 40 feet of the perimeter of the proposed soil absorption area;
 - e. Easements, rights of way, driveways, roads, and buried and above-ground utilities within 20 feet of the perimeter of the proposed soil absorption area;
 - f. Compliance with Chesapeake Bay Local Assistance Department requirements and local regulations should be documented when applicable; and
 - g. Any other information which may have bearing on the issuance of any approval by VDH.
4. Other information pertaining to local ordinances (i.e. Chesapeake Bay requirements, etc.) should be included. However, for the purpose of certifying that an evaluation and/or design complies with the *Sewage Regulations* and for “deemed approval” only those requirements contained in the *Sewage Regulations* will apply unless a local government has requested its health department to implement a local ordinance through this policy (See Part I of this policy, Scope and Applicability).

C. System Designs.

1. Any application for a construction permit accompanied by an OSE certification shall contain construction drawings, plans, and specifications in a form approved by the Division. The OSE must provide sufficient detail to allow an installer to accurately construct the system in accordance with the *Sewage Regulations*. OSE Form H is the form for informal construction drawings, OSE Form J is for specifications, and OSE Form I is the form for submitting design calculations. Three copies of the construction drawing and specifications shall be submitted at the time of application. The following minimum information is required (unless formal engineering plans pursuant to Section 250.G of the *Sewage Regulations* are required):

- a. All the information required on form CHS 202 A and B (Sewage Disposal System Construction Permit) or replacement as determined by the Division.
 - b. Construction drawings. All construction drawings shall be drawn to scale. As a minimum, drawings must show property lines, all existing and proposed structures, existing and proposed sewage systems and water supplies, slope, any topographic features which may impact the design of the system, and existing and proposed easements and utilities within a distance from the center of the proposed soil absorption system and reserve area (when applicable) equal to twice the horizontal setback required by the *Sewage Regulations* for that particular feature (i.e. 140 feet for shellfish growing waters). The scale drawing of the proposed sewage system shall show sewer lines, septic tank, treatment units (if applicable), pump station (if applicable), conveyance system, and subsurface soil absorption system, reserve area, and other relevant features which may affect the proper operation and functioning of the system or be affected by the system. When a private drinking water supply is to be located on the same lot, show all sources of pollution within 200 feet of the proposed water supply.
 - c. Plans and specifications. Plans and specifications sufficient to allow the successful installation of a system shall be included (see OSE Form J).
 - d. Design calculations. Design calculations used to establish the design parameters of the recommended system shall be submitted (see OSE Form I). Design calculations must include:
 - i. Calculations indicating that the minimum separation distance to seasonal ground water, rock, or other limiting factor is provided;
 - ii. Minimum depth of trenches and separation of trenches when slopes are greater than 10%;
 - iii. Design flow calculations used for septic tank and drainfield sizing based on bedrooms or per person;
 - iv. When a pump is used, the calculations will show the static head, friction head and total dynamic head at the operating condition of the pump. The pump curve shall also be provided;
 - v. Pump tank volumes and emergency storage requirements;
 - vi. Trench bottom area and number of trenches;
 - vii. Calculations for low pressure distribution, drip irrigation, etc.;
 - viii. Calculations for Wisconsin mound, other fill systems, etc.
2. The information listed above is the *minimum* information necessary to issue a construction permit. Additional information may be necessary depending on the specific site. Applications that do not contain this minimum data set shall be returned as incomplete or denied. When additional information is needed to assure that the proposed system may be properly installed, it is the OSE's

responsibility to provide such information. The information submitted must be sufficient to assure that the system may be installed in accordance with the *Sewage Regulations* and the permit.

Part III VDH Review

A. Applications and Requests for Permits, Letters, and Subdivision Review.

1. VDH's program for reviewing applications for permits and letters and requests for subdivision review will employ two basic levels of review: the in-office Level 1 Review and the field check or Level 2 Review. With the exception of proprietary pre-engineered systems, applications and requests that are for residential development are subject to the processing time limits and deemed approval as described in Section I.H of this policy.
2. Applications that are found to be incomplete or deficient in a manner that can be corrected by the applicant will be returned to the applicant as incomplete or "unable to process." Examples of such administrative denials include, but are not limited to, the need to clear an area, the need for OSE or PE plans, or the need to mark property lines or house site. In such cases, an applicant has 90 days to perfect the deficiency contained in the application. In general, an owner cannot appeal the rejection of an incomplete application. It is VDH's policy not to allow the owner to file a new (revised) application and pursue an administrative appeal simultaneously. In such a case the owner must decide which potential remedy (new application or appeal) he desires to pursue. Applications that clearly fail to comply with the requirements of the *Sewage Regulations* are to be denied in the usual fashion.

B. Procedures for Applications for Construction Permits and Certification Letters.

1. All applications and fees are to be received and logged in manually or electronically as established by VDH. Local and district health departments are responsible for entering data into VDH's data system, Virginia Environmental Information System (VENIS). If resources allow, all applications should be reviewed for completeness at the time they are received and should be returned to the applicant if incomplete for any reason. An incomplete application should not be logged in, nor should fees be accepted for an application that is known to be incomplete at the time it is filed. Whenever possible, administrative support staff should be responsible for these tasks as described in the Quality Assurance Manual.
2. The Level 1 Review is intended to determine if an application is complete and to confirm that the site and/or the design certified by the OSE substantially comply with the *Sewage Regulations* and this policy. A Level 1 Review consists of administrative and technical reviews and *does not include field review*. Local and district health departments should complete a Level 1 Review of each application accompanied by OSE documentation. The local or district health department may waive the Level 1 Review on a case by case basis if it determines that such review is not necessary based on the (acceptable) past performance of an individual OSE.
3. Generally, an EHS is responsible for the Level 1 Review. The EHS may review VDH records to verify that the site has not been previously denied (note: this refers to the site not the lot) and to verify that the proposed sewage system and/or well do not conflict with the minimum set back

distances for existing and proposed features on adjacent properties. This review of VDH records constitutes a quality assurance review and is not intended to be a substitute for the OSE's sanitary survey (i.e. field evaluation) and thorough records review, which are required to establish setbacks with certainty. The ultimate responsibility for establishing setback distances remains with the OSE certifying the work.

4. If a Level 2 Review will not be performed and the application is found to meet the minimum requirements of the *Sewage Regulations* and this policy, a construction permit or certification letter is issued after the Level 1 Review. Applications that are incomplete or that do not comply with the minimum requirements of the *Sewage Regulations* and this policy are to be returned to the applicant as "unable to process" (administrative denial) or rejected (denied) as appropriate. The administrative denial or rejection must be linked to the appropriate OSE using VENIS. Level 1 Review is generally considered the minimum level of review necessary to ensure that public health and the environment are protected.
5. The Level 2 Review (field check) is a detailed onsite evaluation of the site conditions and/or the design certified by an OSE to establish conformance with the *Sewage Regulations* and this policy.
 - a. The purposes of the Level 2 Review are to ensure that public health and the environment are protected and to assess the performance of private sector evaluators and designers by sampling a subset of the work submitted by OSE consultants.
 - b. Local and district health departments should complete Level 2 Reviews of a minimum of ten percent of the sites and/or designs certified by each OSE. Local and district health departments may conduct additional Level 2 Reviews as necessary or as resources allow.
 - c. Level 2 Reviews may be conducted at any time; however, local and district health departments are *strongly encouraged* to complete them prior to approving or denying an application during the time limits specified by the *Code*. There may be occasions when local and district health departments will need to conduct Level 2 Reviews after an approval has been issued. These include, but are not limited to, complaints from owners, OSEs, and the public regarding an approved site or situations where VDH has reason to believe that an OSE has certified one or more sites that do not substantially comply with the *Sewage Regulations*. In such cases it may be necessary to conduct additional Level 2 Reviews of approved sites to determine whether public health and the environment are being threatened by the actions of a private OSE.
 - d. A Level 2 Review may include conducting soils borings, examining backhoe pits or other excavations, a sanitary survey, permeability testing, or other actions necessary to assure that a site and/or design complies with the *Sewage Regulations* and this policy.
 - e. The local or district health department will perform Level 2 Review using the best methods available at the time, including evaluating open backhoe pits or other excavations and using a hand auger. An owner will not be required to hire a backhoe for a Level 2 Review if one is not available at the time of the review.
 - f. To the extent that it is practical, the local or district health department should notify the owner when it intends to conduct a Level 2 Review. Such notice may be by telephone or other

electronic means (properly documented in the file) or it may be in writing. The local or district health department must send a copy of the completed report to the owner and the appropriate OSE.

6. If a Level 2 Review reveals that a site and/or a design does not substantially comply with the *Regulations* and this policy, the application will be denied. The denial letter must be linked to the appropriate OSE using VENIS. If such a site and/or design is the subject of an approval already issued by VDH, the local or district health department may initiate procedures to revoke or modify the approval (see Part IV of this policy).
7. Applications for non-residential development received with OSE/PE certified evaluations and/or designs may be reviewed and approved according to the procedures outlined in this policy.
8. The following procedures should be followed when processing applications for individual construction permits submitted with evaluations and/or designs certified by an OSE/PE:
 - a. Receive and log in application; accept and process fee;
 - b. Date stamp all materials with the date received;
 - c. Complete Level 1 Review within five working days.
 - d. If the application substantially complies with the *Sewage Regulations* and this policy, determine whether a Level 2 Review will be performed. If no Level 2 Review is planned, generate and sign the appropriate permit approval letter. The letter is sent to the owner with a copy to the OSE.
 - e. Conduct Level 2 Review as appropriate and complete the Level 2 Review Report.
 - f. If the application substantially complies with the *Sewage Regulations* and this policy based on Level 2 Review, generate and sign the appropriate permit approval letter and send to the owner with a copy to the OSE. Include the Level 2 Review Report as an attachment to the approval letter.
 - g. If, based on Level 1 or Level 2 Review, the submittal does not substantially comply with the *Sewage Regulations* and this policy, the application will be denied or denied administratively if the deficiency can be corrected by the applicant. The action, administrative denial or denial, must be linked to the appropriate OSE using VENIS. Generate and sign the appropriate denial letter. Denial letters must be sent by certified mail. A copy of the Level 1 Review checklist, Level 2 Review Report, or other documentation of review must be included with the denial letter.
 - h. Failure to generate a denial or approval letter within 15 working days of the date the application was received results in an application deemed approved. In this case, generate the appropriate letter and send to the owner with a copy to the OSE. Record the action in VENIS for reporting.

9. The following procedures should be followed when processing applications for individual certification letters:
 - a. Receive and log in application; accept and process fee;
 - b. Date stamp all materials with the date received;
 - c. Complete Level 1 Review within ten working days.
 - d. If the submittal substantially complies with the *Sewage Regulations* and this policy, determine whether a Level 2 Review will be conducted. If no Level 2 Review is planned, generate and sign the appropriate certification letter and send to the owner with a copy to the OSE/PE (see OSE Form N);
 - e. Conduct and document the Level 2 Review as appropriate;
 - f. If the application substantially complies with the *Sewage Regulations* and this policy based on Level 2 Review, generate and sign the appropriate certification letter and send to the owner with a copy to the OSE/PE. Include the Level 2 Review Report as an attachment to the letter;
 - g. If, based on Level 1 or Level 2 Review, the submittal does not substantially comply with the *Sewage Regulations* and this policy, the application must be denied or denied administratively if the deficiency can be corrected by the applicant. This action must be linked to the appropriate OSE using the VENIS. Generate and send the appropriate denial letter to the owner with a copy to the OSE. Denial letters must be sent by certified mail. A copy of the Level 1 Review checklist, the Level 2 Review Report, or other documentation of review must be included with the denial letter.
 - h. Failure to approve or deny the application within 20 working days of the date the application was received results in an application deemed approved. In this case, generate the appropriate letter. Record the action in VENIS for reporting.
10. The following procedures should be used when processing applications for multiple lot certification letters:
 - a. Receive and log in applications; accept and process fees. Return applications without processing if they do not contain OSE certified evaluations and abbreviated design information;
 - b. Date stamp all materials with the date received;
 - c. Complete and document the Level 1 Review within 45 working days;
 - d. If the submittal substantially complies with the *Sewage Regulations* and this policy, determine whether a Level 2 Review will be conducted. If no Level 2 Review is planned, generate and sign the appropriate certification letters and send to the owner with a copy to the OSE;

- e. Conduct Level 2 Review as appropriate and complete the Level 2 Review Report;
 - f. If the applications substantially comply with the *Sewage Regulations* and this policy based on Level 2 Review, generate and sign the appropriate certification letters and send to the owner with a copy to the OSE. Include the Level 2 Review Report as an attachment to the letter;
 - g. If, based on Level 1 or Level 2 Review, the submittal does not substantially comply with the *Sewage Regulations* and this policy, the application must be denied or denied administratively if the deficiency can be corrected by the applicant. Generate and sign the appropriate denial letter and to the owner with a copy to the OSE. Denial letters must be sent by certified mail. A copy of the Level 1 Review checklist, the Level 2 Review Report, or other documentation of review must be included with the denial letter.
 - h. Failure to approve or deny the applications within 60 days of the date the applications were received results in the applications being deemed approved. In this case, generate the appropriate letter. Record the action in VENIS for reporting.
11. Where local ordinances require a VDH employee to sign a subdivision plat or otherwise indicate in writing that sites for onsite wastewater systems have been approved (or disapproved), the following procedure shall be used. Local health departments will review proposed subdivisions only at the request of local governments pursuant to local ordinances adopted pursuant to Section 15.2-2242 of the *Code*.
- a. All submittals must be date stamped the date they are received. Local and district health departments are to return requests without processing if they do not contain OSE certified evaluations and abbreviated design information;
 - b. The local or district health department must send an acknowledgment letter to the local government indicating the date received and the projected approval date (45 days from date received);
 - c. Complete and document the Level 1 Review within 45 working days
 - d. If the submittal substantially complies with the *Sewage Regulations* and this policy, determine whether a Level 2 Review will be conducted. If no Level 2 Review is planned, generate and sign the subdivision approval letter and send it to the local government entity with copies to the owner and to the OSE and/or PE. The local health department designee may or may not be required to sign the actual plat according to local requirements. If a signature on a plat is required, there shall be a statement added to the plat that mirrors the assertions contained in the subdivision approval letter regarding the approval based on OSE evaluations pursuant to Section 32.1-163.5 of the *Code*.
 - e. Conduct and document the Level 2 Review as appropriate;
 - f. If the submittal substantially complies with the *Sewage Regulations* and this policy based on Level 2 Review, generate and sign the subdivision approval letter and send it to the local

government entity with copies to the owner and the OSE/PE. Include the Level 2 Review Report as an attachment to the letter;

- g. If, based on Level 1 or Level 2 Review, the submittal does not substantially comply with the *Sewage Regulations* and this policy, the subdivision submittal must be denied. Generate and sign the appropriate denial letter and send it to the local government entity with copies to the owner and the OSE. The letter must state that the application was denied and it must state the reasons why. A copy of the Level 1 Review checklist, the Level 2 Review Report, or other documentation of review must be included with the denial letter.
- h. Failure to approve or deny the submittal within 60 days of the date it was received results in the submittal being deemed approved. In this case, generate the appropriate letter. Forward a copy of the letter to the local government entity that requested the review. Record the action in VENIS.

C. Revalidating Expired OSE/PE Permits; Relying on Previous Certifications.

- 1. In general, VDH will rely upon the certified evaluation and/or design of an OSE when considering the renewal or revalidation of an expired permit as long as there is reasonable assurance that there have been no substantive changes to the approved site and system design or location. When VDH has issued a construction permit in reliance upon the work of an OSE/PE (evaluation or design or both) and that permit has expired of its own terms and the owner has not installed the system pursuant to the permit, the following shall apply:
 - a. Pursuant to Section 32.1-164.1:1 of the *Code* “*if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional eighteen months.*” In these cases, the applicant must file an application; however, there are no fees associated with the application. As long as there are no changes to the system design or the location of the structure or system, the local or district health department is not required to perform a site visit and no new OSE or PE certification is required. The local or district health department will require the owner to provide one of the following statements:
 - i. A signed and notarized statement affirming that there has been no “substantial, intervening change in the soil or site conditions where the onsite sewage system is to be located;” or
 - ii. A statement signed by an OSE/PE affirming that there has been no “substantial, intervening change in the soil or site conditions where the onsite sewage system is to be located.”

Unless the local or district health department is aware of specific facts supporting a conclusion that the permit does not substantially comply with the *Sewage Regulations* it will extend the permit by adding eighteen months to the original term of the permit. No additional extensions may be permitted.

- b. If no building permit has been obtained, if building construction has not commenced, or if the extension mentioned in Paragraph a. above has expired the owner will be required to file a new application with the appropriate application fees. Applications are to be processed using the procedures outlined in Paragraph a. above.

- c. If the applicant makes substantive changes to the application (i.e. changes in location of the structure, number of bedrooms, etc.) or does not provide the statement required in Paragraph a. above, the application is to be handled as a new application.
2. In some circumstances new certifications as to site and soil conditions and system design are required. Examples of such situations include, but are not limited to, new approvals (letter, permit, or subdivision lot), modification of an existing approval, and changes to an existing or expired construction permit design. No new OSE certification is required when an applicant seeks to renew an expired permit with no changes in the design or location of the system or in the location of the structure.

D. Professional Courtesy Reviews.

1. VDH will provide certain consultative field reviews with an OSE. Reviews for individual lots may be site specific, whereas reviews for proposed subdivisions are general in nature. In all cases the courtesy review must be requested prior to the filing of any application with VDH or prior to filing any documents with a local government for a proposed subdivision. The reason for this requirement is that the courtesy reviews are intended to be discretionary with VDH and not subject to the time limits contained in the *Code* for processing OSE requests.
2. Courtesy reviews are not intended to relieve an OSE of the responsibility for determining whether a site substantially complies with the minimum requirements of the *Sewage Regulations*.
3. The following items are required for any OSE requesting courtesy review:
 - a. The OSE requesting a courtesy review must complete OSE Form X. This form includes a signature block that must be signed by the owner of record giving VDH permission to enter the property for the intended purpose.
 - b. Completed site and soil evaluation report (OSE Form G). The OSE is not required to sign the certification statement normally required with an OSE submittal. In place of the certification statement, the OSE must provide a brief, written description of the site or soil feature that he has identified as questionable or marginal for the particular site or area where the courtesy review is being requested.
4. Local and district health departments are required to track courtesy reviews according to VDH policy. Requests should be date stamped for the date received. Requests should be logged into VENIS. All activities (i.e. refusal, date of review, date of report, etc.) should also be recorded.
5. Professional courtesy reviews are not considered case decisions. They cannot be appealed nor are they binding on any party. Local and district health departments must document all courtesy reviews using the report form provided (OSE Form Y). A copy of the completed report must be mailed to the owner and to the OSE.

6. VDH may limit professional courtesy reviews. If a local or district health department elects not to provide a requested courtesy review, it must inform the OSE in writing (with a copy to the owner). This notice should be sent within 15 days of the date the request was submitted.

Part IV

Dealing with Problems, Enforcement, Etc.

A. General Discussion.

1. The policy of VDH is to take appropriate enforcement actions to assure public health and environmental protection.
2. Enforcement actions should reflect the seriousness of the alleged offense and VDH's mission to protect public health and the environment.

B. General Guidelines and Information.

1. Local and district environmental health staff and directors are primarily responsible for problem solving as it relates to situations encountered in the field regarding site approvals, system design, and construction. They are encouraged to utilize the procedures outlined in this policy. Individual situations will vary, and writing procedures to anticipate all the potential scenarios is impossible. District and local health departments are encouraged to seek the advice of the Division if they are unsure of a particular procedure.
2. VDH will not accept responsibility or liability for negligent acts by private evaluators or designers. VDH will not sacrifice public health and environmental protection in order to reduce potential impacts (financial or otherwise) upon owners resulting from negligence by private evaluations and designs. VDH will be a partner in trying to identify solutions to problems. The private sector is expected to take the lead in problem solving in situations where the primary responsibility for approval lies with an OSE/PE. Where private litigation is appropriate for resolving equity issues, VDH will recommend that owners seek legal counsel to protect their rights and investments.

C. Previous Denials.

1. VDH will not accept an OSE certification that any site meets the *Sewage Regulations* if that site has been denied by VDH unless the Board's regulations have changed in such a way that the site has been rendered suitable by the change in regulations. An OSE is not prohibited from certifying a site on a property that is different from the site that was denied, nor is he prevented from assisting an owner or another OSE by offering expert opinions regarding site and soil conditions on a rejected site.
2. The primary reason for the prohibition on certifying previously rejected sites is to preserve the integrity of the appeal process. The provisions of the *Code* that require VDH to accept private evaluations and designs, together with the provisions for deemed approval, create the potential to short-circuit the appeal process if an OSE/PE were able to certify previously denied sites. Such a short-circuiting of the appeal process could abrogate the Board responsibility to protect public health and the environment and render the Sewage Handling and Disposal Appeals Review Board

(Appeals Board) moot. When VDH has denied an application, the owner has the right to appeal that decision via procedures that are defined in the Administrative Process Act (*Code* Section 2.2-4000 et seq.) and the *Sewage Regulations*.

3. When VDH has rendered a case decision regarding the suitability of a site for an onsite sewage system under the *Sewage Regulations* and the owner has chosen not to exercise his right to appeal that decision, VDH has sole discretion to decide whether to re-evaluate its findings. This policy establishes criteria for reviewing a case decision when an OSE renders an opinion in writing that a previously denied site complies with the *Sewage Regulations* and/or VDH policies for an onsite sewage system. In no case will the OSE opinion in such case be considered binding upon VDH, nor will the time limits associated with OSE submittals or deemed approval apply. If an owner wishes to file a new application in such a case, he must comply with one of the following:
 - a. If more than two years have elapsed since the date of VDH's written decision the owner must provide at least one written report from an OSE stating that the site substantially complies with the *Sewage Regulations*. The report must include an evaluation report that complies with the requirements of this policy (except that no certification statement is required) and the OSE's explanation and opinion.
 - b. If two years or less have elapsed since the date of VDH's written decision, the owner must provide written reports as described in Paragraph a. above from two or more OSEs.

VDH will handle the application as it would a bare application and render a new decision. The owner may challenge an adverse decision according to the appeal process provided in the *Sewage Regulations*.

D. Appeals of Denials.

No owner may appeal the denial or rejection of any construction permit, letter, or subdivision approval, when the denial is based on an incomplete application until such time as the application is made complete. Challenges to permit denials shall follow the processes provided in the *Sewage Regulations*. If necessary, the Division will resolve any disputes that may arise between an owner and a local or district health department regarding incomplete applications.

E. VDH Actions to Revoke or Modify Approvals.

1. VDH may initiate procedures to revoke or modify its approvals whenever it believes that a site approved in reliance upon the certification of an OSE does not substantially comply with the minimum requirements of the *Sewage Regulations*.² Because they are a type of litigation, administrative proceedings to revoke approvals are, by their nature, adversarial and tend to generate negative feelings among OSEs, owners, and VDH staff. Although these adversarial proceedings are sometimes necessary, all parties stand to benefit if these situations can be resolved in ways that are mutually agreeable to all parties. For this reason, modifying an approval with the owner's consent is a desirable option in a revocation situation.

² VDH is responsible for taking administrative action to revoke or modify *any* approval if it finds at a later date that the approval does not substantially comply with the *Sewage Regulations*. VDH bears this responsibility for those approvals issued in reliance upon an OSE/PE certification or upon evaluations and designs performed by its own employees.

2. When VDH modifies an approval in a manner that is agreeable to the owner, the net result is still the revocation of the original approval. The difference, however, is that the adversarial process is avoided and the revocation can occur relatively seamlessly with the issuance of a new permit. VDH believes that, with relatively few exceptions, all potential revocation situations can be resolved with the issuance of some type of modified approval. The commissioner has granted at least one variance to date to resolve an OSE permit revocation situation and anticipates that others may be granted in the future. Obviously, the cooperation of the owner and the OSE are invaluable in the process. If an owner would rather challenge VDH's findings regarding the site and soil conditions, it is unlikely that a problem will be resolved by consent, and it is more appropriate to proceed with the (adversarial) revocation process. If the district or local health department is working to try to resolve a problem situation with the owner's cooperation, a key concern is that the process not be allowed to drag on indefinitely.
3. When the local or district health department becomes aware that a site or sites may not comply with the *Sewage Regulations*, the following procedures may be followed. The district health director has the discretion to decide whether it is best to proceed with the adversarial process (hearing) or whether VDH should attempt to resolve the situation with the owner's consent. These procedures apply to cases where facts are discovered that would have precluded the issuance of VDH's approval had they been known at the time that approval was granted.³
 - a. Modifying an approval with the owner's consent (non-adversarial).
 - i. The environmental health manager should contact the owner (telephone, fax, letter) and explain the situation in plain language. He should tell the owner how VDH became aware of the situation and give a brief but concise summary of the facts as they are understood at the time. This communication must convey the message that VDH is concerned that the site may not substantially comply with the *Sewage Regulations* and if those concerns are confirmed, VDH may need to take some action to rescind or modify the approval that was granted. If the situation involves a construction permit, VDH must ask the owner not to construct the system until the situation is resolved. The environmental health manager should ask to set up a meeting at the site with the owner and the OSE who did the work, to review the facts and begin a dialogue to resolve the situation. Additional evaluations, testing, etc. may be necessary to augment or confirm the facts before the discussion can turn to options such as modifying the system design or assisting the owner in requesting a variance. Always follow up verbal contacts with a letter to the owner (copy to the OSE who certified the site). If the owner is not amenable to this kind of informal discussion/meeting, the district director should consider implementing the administrative proceedings for revocation.
 - ii. Appropriate representatives from the local or district health department (may include Virginia Polytechnic Institute and State University contract soil scientists) should meet with the owner and his agents (OSE, PE, contractor, etc.) as necessary to review facts, gather additional information, etc. If the parties can come to some resolution, the specific steps to that resolution (and expected timeframes for accomplishing them) should be clearly spelled

³ These procedures are not applicable to situations where a construction permit or other approval is rendered null and void because conditions have changed from those shown on the permit. All that is required in these situations is proper written notice to the owner that the permit or letter is null and void because of the changed conditions.

out in a letter from the environmental health manager to the owner (copy to the OSE). Potential options include: identifying a new site that substantially complies with the *Sewage Regulations*, adding secondary treatment to a system that was certified as a septic effluent system, changing the design from an in-ground system to a shallow-placed system, or assisting the owner in applying for a variance if no solution is found that substantially complies with the *Sewage Regulations*. The philosophy here is that VDH is not ‘fixing’ the problem for the OSE, but rather is participating in the solution by providing information, facilitating communications, offering advice on regulatory requirements, and facilitating variance requests, etc. In many cases engineering plans may be needed to complete the process. When a satisfactory resolution has been worked out, the owner will need to agree in writing that VDH had substantial evidence to support its decision to revoke the approval and that he does not contest that case decision.

- iii. Resolving a potential revocation situation informally, with the owner’s consent, necessarily relies on cooperation among the owner, the OSE/PE, and VDH. An appropriate time frame for resolving a potential revocation situation by consent is about six months. If communications have broken down, the situation has become emotional or confrontational, or things are dragging on because the owner or another party is unresponsive, the district director will need to seriously consider whether it is necessary to move to the next level, the administrative proceeding to revoke the approval.

b. Revocation proceedings (adversarial).

- i. Factual assessment. Before giving notice of any intent to take administrative action to revoke an approval, the district health director, with assistance from the environmental health manager and staff, must assess the factual information at hand. If the district director determines that there is adequate factual evidence to support a preliminary finding that a site may not substantially comply with the *Sewage Regulations*, he should proceed with notice to the owner of an informal fact-finding conference and the intent to revoke VDH’s approval. If the director determines that the facts support a conclusion that the site and/or design substantially comply with the *Sewage Regulations*,⁴ he may decide not to initiate any administrative action. The director may request permission from the owner to conduct additional evaluations to gather additional factual information.
- ii. Notice to owner. If the district health director has determined that there is substantial evidence to support the decision to go forward with the revocation process or if the owner is uncooperative in allowing additional evaluations, the owner (and local government when appropriate) must be notified in writing. The notice should be sent by certified mail or hand-delivered within ten working days, if possible, of discovery of the factual basis for the decision to revoke. The notice must state briefly the factual basis for believing that it may be necessary to revoke the approval (with appropriate citations to the *Sewage Regulations*) as

⁴ Administrative (case) decisions rely on a level of certainty and a degree of evidence called “substantial evidence.” Substantial evidence is “evidence greater than a scintilla of evidence that a reasonable person would find sufficient to support a conclusion.” (Merriam-Webster’s Dictionary of Law, 1996) This standard does not require that every fact support a conclusion of substantial compliance. Indeed, many times decision-makers are faced with ambiguous, inconsistent, even contradictory facts. VDH has the discretion to find that a site and/or design substantially complies with the *Sewage Regulations*, even though there may be contradictory facts in the record. District directors should consult with the Division, the Assistant Attorney General, or both, for advice regarding case decisions.

well as the time, place, date, and purpose of the informal conference (with appropriate citation to the *Sewage Regulations*). In the case of a construction permit, the notice must also ask the owner not to install the system until the issue has been resolved. If the case involves VDH's approval of a subdivision, the notice must be addressed to the owner of record and a copy must also be sent by certified mail (or hand delivered) to the appropriate local government official responsible for subdivisions. The environmental health manager is responsible for ensuring that proper notice is delivered. A copy of the notice should be sent to the OSE/PE who certified the site or sites.

- iii. Informal fact-finding conference. The district health director convenes the informal fact-finding conference. The district or local health department may hire a court reporter to make a verbatim record of the proceedings; however, this is not required. In most cases, the local or district health department staff should present their factual evidence and arguments first. The owner should then have the opportunity to present his factual evidence and rebuttals. The owner has the right to be represented by an attorney or other qualified person; however, neither party has the right to cross-examine any witnesses in an informal fact-finding conference. The district director may ask questions and facilitate discussion and is responsible for maintaining order. With the consent of the owner, the director may continue the informal fact-finding conference to a later date to allow for the production of additional evidence, additional testing or evaluation, or site visits.
- iv. Case Decision. At the conclusion of the informal fact-finding conference the district director is responsible for issuing a case decision. In accordance with Section 200 of the *Sewage Regulations* that decision must be sent to the owner by certified mail within 15 days of the close of the informal fact-finding process.⁵ The written decision must describe the factual as well as the regulatory basis for the decision. The decision must inform the owner that he may appeal the decision to the Appeals Board in accordance with the *Sewage Regulations* and that his request for a hearing must be received by the Appeals Board within 30 days of the owner's receipt of the case decision. No suggested form for this decision is provided in this policy. Directors unfamiliar with writing case decisions should seek guidance from the Division, the Assistant Attorney General, or both.
- c. Copy of file sent to the Division. Within ten days of issuing its decision to revoke or modify an approval that was issued in reliance upon an OSE/PE certification, the district or local health department must notify the Division.
- d. Election of remedies, new application, fees waived, plan to remedy if original permit by OSE/PE, time limits not applicable if variance is requested. The owner may elect to challenge a decision to revoke an approval by requesting a hearing before the Appeals Board or the owner may elect to file an application for a variance or a new application. It is VDH's policy not to allow the owner to pursue an appeal and file an application for a variance or a new application simultaneously. VDH will waive the application fees for an owner who elects to file a new application within 30 days. The new application must be submitted with an OSE/PE plan (evaluation and design) for remedying the problems that resulted in the revocation of VDH's approval. The new application is to be handled using the same procedures outlined for all

⁵ The authority for issuing and revoking permits derives from the *Sewage Regulations*. Therefore, the decision must be made in accordance with the *Sewage Regulations*.

applications submitted with OSE/PE certifications. If a variance is to be requested because there is no site that complies with the *Sewage Regulations*, a request for variance must be included with the application and the time limits for processing the application specified in Section 32.1-163.5 of the *Code* shall not apply and, in the alternative, the time limits for processing a variance request (Section 190, *Sewage Regulations*) shall apply.

Part V

Final Inspections

- A. An OSE/PE is expected to perform a final inspection for any system installed pursuant to a construction permit where the permit was based on a design certified by the OSE/PE. VDH may, but is not required to, inspect such systems. Both of these provisions apply to all construction permits issued pursuant to applications filed on or after July 1, 2002. VDH is responsible for the final inspection on any construction permit issued pursuant to an application filed before July 1, 2002, and an AOSE is responsible only for filing a completion statement. In order to ensure that these requirements are met installers should notify the appropriate local or district health department whenever they are ready for a final inspection, regardless of whether that inspection is the responsibility of an OSE/PE or VDH.
- B. OSE Form BB contains the inspection report and completion statement expected from of an AOSE/PE.
- C. The OSE/PE is the primary inspection agent for those systems that he or she designed. Each OSE/PE should attempt to secure the contractor's completion statement that is required under the *Sewage Regulations*. In accordance with the *Regulations*, the owner remains the responsible party with respect to the contractor's completion statement. However, the OSE/PE can facilitate the eventual issuance of an operation permit by securing the contractor's completion statement and forwarding that statement to the appropriate local or district health department. The contractor's completion statement may be used for OSE/PE construction permits. OSEs and PEs are encouraged to print this form and furnish it for the contractor to sign at the time of the final inspection.
- D. Local and district health departments are not required to perform final inspections of OSE/PE-designed systems but may perform such inspections at their sole discretion and as resources allow. Local and district health departments are discouraged from conducting final inspections as a routine method for accomplishing Level 2 Reviews.
- E. Whenever an OSE/PE is responsible for the final inspection of an onsite system (see Par. A above), that responsibility shall extend to any subsequent re-issuance of the permit (i.e. renewal, change of owner, etc.). VDH is responsible for informing the OSE/PE of the re-issuance of a permit by sending a copy of the permit approval letter to the OSE/PE who originally designed the system. Whenever an OSE/PE conducts an inspection of a system and finds that it he cannot approve it, he shall immediately notify the owner in writing and send a copy of the notice to the appropriate local or district health department. The written notice must include an explanation of the reasons for the OSE/PE's finding. Whenever an OSE/PE requires corrective actions prior to finding that a system is properly installed, he must document those corrective actions in the inspection report and completion statement.

F. As-built drawings, when required, are subject to the same site location requirements as construction drawings (See Part II.B.3 of this policy).

G. VDH will be the primary agent for inspecting the location and construction of all private wells. An OSE/PE is required to inspect and file a completion statement (AOSE Form EE) for any well-only permit issued in reliance upon a certification by that OSE/PE.

Part VI

Contracting With OSE in a Backlog Situation, VDH Employees

A. When backlogs exceed the maximum allowed by law, district and local health departments are to follow the guidance provided in GMP #71 or successor policy.⁶

B. No district or local health department may contract with an OSE/PE who is currently employed by VDH.

C. No VDH employee may act as a private sector OSE/PE while employed by VDH.

⁶ Section 32.1-163.4.A of the Code states, "In any case where the local or district health department experiences a septic system or other onsite sewage system permit backlog of fifteen working days from the application filing date, the Commissioner shall contract with authorized onsite soil evaluators for the field evaluation of the backlogged application sites. The Department shall review these evaluations and may approve the permit applications upon finding that the evaluations are in compliance with the Board's regulations implementing this chapter. The Department shall not be required to do a field check of the evaluation prior to issuing the permit; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment."

Index of Forms. These forms are available upon request from the Division or they may be obtained by visiting the VDH website: vdh.virginia.gov. Forms are subject to change without notice; therefore, all OSEs and PEs are encouraged to periodically review the VDH website to ensure they are using the most current forms.

OSE Form E-	Abbreviated design (for certification letters and subdivisions)
OSE Form F-	Request for subdivision review by local government
OSE Form G-	Site and Soil Evaluation Report
OSE Form H-	Construction Drawings
OSE Form I-	Design Calculations
OSE Form J-	System Specifications
OSE Form X-	Form for requesting professional Courtesy Review
OSE Form BB-	OSE/PE inspection form and Completion Statement
OSE Form I I -	Cover Page